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8
9 UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA

11 Grand Canyon Ranch, LLC, an Arizona
limited liability company, f.k.a. Grand
12 Canyon West Ranch, LLC,

13 Plaintiff,

14 v.

15 Sally Jewell, in her official capacity as
16 Secretary of the United States Department
17 of the Interior; *et al.*,

18 Defendants.

Case No. 3:03-cv-02496-NVW

**PLAINTIFF'S BENCH
MEMORANDUM ON DISCHARGE
OF WATER UNDER ARIZONA LAW**

19
20 Plaintiff Grand Canyon Ranch, LLC, formerly known as Grand Canyon West
21 Ranch, LLC ("Grand Canyon Ranch"), provides the following bench memorandum on the
22 status of Arizona law related to the artificial concentration and discharge of water. The
23 Court may recall that this issue arose during Mr. Scott Schmidgall's testimony on
24 September 25, 2013. Mr. Schmidgall testified that the construction of the road effectively
25 creates a dam that obstructs the natural drainage of the land. The Bureau of Indian Affairs
26 has installed drainage culverts (i.e., pipes) underneath the road that collect surface waters

1 from the Bureau of Land Management's upstream property and discharge the water in two
 2 locations on Grand Canyon Ranch's property. One of the current drainage discharge
 3 locations is in the immediate path of Grand Canyon Ranch's buildings, generator, and fuel
 4 storage. Black letter Arizona law does not countenance such conduct:

5 One may not divert waters flowing in a natural channel upon the lands of his
 6 neighbor who is under no duty to receive them, and a landowner has no
 7 right to collect surface waters in artificial channels and discharge it in large
 quantities onto the land of an adjoining owner to his damage.

8 *Kirkpatrick v. Butler*, 14 Ariz. App. 377, 380, 483 P.2d 790, 793 (App. 1971) (internal
 9 citations omitted); *see also City of Tucson v. Dunseath*, 15 Ariz. 355, 364, 139 P. 177, 181
 10 (1914) (finding city "guilty of an actionable wrong" where it caused water to discharge
 11 onto another's property "in a greater volume and with added force."); *Campbell Estates,*
 12 *Inc. v. Bates*, 21 Ariz. App. 162, 169, 517 P.2d 515, 522 (App. 1973) (upholding award of
 13 punitive damages where "Defendants constructed . . . [a] drainage ditch dumping all
 14 drainage directly onto plaintiff's property. They did not consult or make arrangements
 15 with plaintiffs before doing this. They dug the ditch first and asked questions later.").

16 DATED this 25th day of September, 2013

17 **MOYES SELLERS & HENDRICKS**

18
 19 /s/ Keith L. Hendricks

20 Keith L. Hendricks

21 Louis D. Lopez

22 Matthew A. Lensch

23 Attorneys for Plaintiffs

24 Grand Canyon Ranch, LLC,

25 f.k.a. Grand Canyon West Ranch, LLC

CERTIFICATE OF SERVICE

☒ I hereby certify that, on September 25, 2013, I electronically transmitted the attached document to the Clerk of the Court using the CM/ECF System which will send notification of such filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

/s/ Donna Navarro